

**Mr. Martin Doe**

Deputy Secretary-General  
Permanent Court of Arbitration

« 9 » August 2024

**Re: PCA Case No. 2019-28 – Ukraine v. The Russian Federation**

Dear Mr. Doe,

By a letter from the President of the International Tribunal for the Law of the Sea (ITLOS), dated 8 August 2024, the Russian Federation was notified of President Heidar's decision to appoint two arbitrators to replace Professor McRae and Judge Wolfrum on the Arbitral Tribunal, and to appoint Mr. Gudmundur Eiriksson as President of the Tribunal.

This decision was made despite the Russian Federation's persistent and firm objection to the involvement of the President of ITLOS as the appointing authority, due to the incorrect triggering of Article 3(f) of Annex VII to the United Nations Convention on the Law of the Sea (UNCLOS) unilaterally advanced by Ukraine. As you and the Arbitral Tribunal are aware, the Russian Federation disputes that this is the applicable procedure for the situation at hand. The Arbitral Tribunal has also expressed hesitation regarding the direct applicability of Article 3, as reflected in, *inter alia*, paragraph 45 of its Procedural Order No. 9 dated 18 July 2024.

In proceeding with Ukraine's irregular prompting, the President of ITLOS referenced Article 3(f) of Annex VII. This reference is inapposite, as the "manner prescribed for the initial appointment" in said provision cannot apply to only one stage of the appointment procedure under Article 3 without accounting for preceding requirements. Specifically, the stage described in Article 3(e), which the President alludes to, could not have been reached without satisfying the preconditions in Article 3(d). These preconditions were never met, as confirmed by the Arbitral Tribunal's Procedural Order No. 9, which notes that "the manner prescribed" cannot include the time period specified in Article 3(d) for triggering the possibility of sending a request under Article 3(e), and that neither Annex VII nor the Rules of Procedure specify other conditions for such a request.

The Russian Federation's position, extensively detailed in prior correspondence, is that the appointment of arbitrators, following the unseating of Professor McRae and Judge Wolfrum,

necessitated a ruling by the Arbitral Tribunal on the appropriate procedure for such appointments. However, the Russian Federation's request for such a ruling has been rejected.

Furthermore, both President Heidar's letter and the Tribunal's related press release reference that such appointments under Article 3(e) require consultations with the parties, purportedly conducted by correspondence. However, the Russian Federation did not engage in any such consultations. The correspondence between the Russian Federation and President Heidar was limited to the Russian Federation communicating its firm rejection of President Heidar's involvement at Ukraine's behest and requesting in-person consultations to reach an agreement on the proper procedure following the Arbitral Tribunal's Procedural Order No.9, to which President Heidar did not agree. Thus, the requisite consultation with the parties under Article 3(e) has not been satisfied.

The Russian Federation deplores that the President of ITLOS chose to proceed with the appointments despite the critical procedural deficiencies outlined above and in prior exchanges. It is also regrettable that the Russian Federation's *bona fide* suggestions for in-person consultations within a reasonable timeframe to find an acceptable way forward were ignored. Additionally, ITLOS has made these appointments public and stated that "*the composition of the five-member Annex VII Arbitral Tribunal is now as follows: Gudmundur Eiriksson, president (Iceland), Alexander N. Vylegzhanin (Russian Federation), Christopher Greenwood (United Kingdom), James Kateka (United Republic of Tanzania), and Joanna Mossop (New Zealand),*" thus presenting it as a *fait accompli*.

The Russian Federation must voice its objections in light of this situation. Despite not being called upon to interpret Article 3 of Annex VII, but merely to make appointments, President Heidar has fully endorsed Ukraine's submission on the interpretation of Article 3. This is notwithstanding the Arbitral Tribunal's statement that "*if requested by one or both Parties to rule on the dispute or should they feel that they should so rule suo moto, they might find that the proper application of Article 3 of Annex VII and the Rules of Procedure is not as straightforward as either Party submits. This reinforces their view that it would be beneficial for the Parties to engage in further efforts to achieve agreement.*"

The Russian Federation firmly submits that the purported appointments are inconsistent with the applicable rules and were made without the Russian Federation's participation in consultations, or consent. Therefore, the Russian Federation cannot consider itself bound by

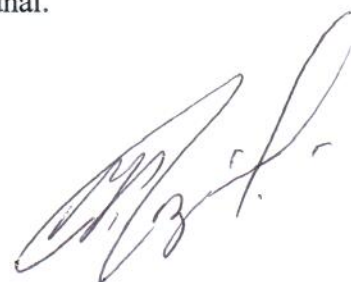


the President's decision, and rejects the appointments. If acted upon this decision, the Arbitral Tribunal will not be properly constituted.

In light of the above, the Russian Federation hereby suspends its participation in this Arbitration until further notice.

The Russian Federation respectfully requests that this information be conveyed to the Agent of Ukraine and the incumbent members of the Arbitral Tribunal.

Sincerely,

A handwritten signature in black ink, appearing to be 'G. V. Kuzmin', written in a cursive style.

Gennady V. Kuzmin

Agent of the Russian Federation